

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KEVIN BERNARD DURHAM,

Plaintiff,

v.

LINDUS CONSTRUCTION/MIDWEST
LEAFGUARD, INC.,

Defendant.

ORDER

09-cv-004-bbc

In this lawsuit brought under 42 U.S.C. § 1983, plaintiff Kevin Durham contended that defendant Lindus Construction/Midwest Leafguard, Inc. discriminated against him because of his race. On December 18, 2009, I granted defendant's motion for summary judgment, denied plaintiff's motions to amend his complaint and present matters outside the pleadings, entered judgment in defendant's favor and closed the case.

Now before the court is plaintiff's notice of appeal, dkt. #40, and his amended notice of appeal, dkt. #44. In his notice of appeal, plaintiff states that he is appealing the court's decision in this matter. However, in his amended notice of appeal he states that he is appealing only the court's denial of his motion to amend his complaint and his motion to present matters outside the pleadings. Because these denials were included in the decision

closing this case, I understand plaintiff to be appealing a final order. 28 U.S.C. § 1292.

Further, in his amended notice of appeal, plaintiff asks to proceed in forma pauperis on appeal. Because plaintiff was granted leave to proceed in forma pauperis in this court, he “may proceed on appeal in forma pauperis unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed.” Fed. R. App. P. 24(a). I cannot certify that the appeal is not taken in good faith and I can see no other reason to deny plaintiff’s request to proceed in forma pauperis.

ORDER

IT IS ORDERED that plaintiff’s motion for leave to proceed in forma pauperis on appeal, dkt. #44, is GRANTED.

Entered this 12th day of January, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge